## APPENDIX A — WAIVER AND RELEASE OF JERRY JENEY DATED OCTOBER 11, 1999

### WAIVER & RELEASE — JERRY JENEY

### INTRODUCTION

A. The Quaker Oats Company ("Quaker") and the United States Equal Employment Opportunity Commission ("EEOC") have reached a settlement of potential classwide claims involving the EEOC's allegation that Quaker discriminated against employees over the age of 40 during the 1994 re-engineering of its sales force. Quaker denies that it discriminated against anyone.

B. You, Jerry Jeney ("you"), are one of the potential Class Members to whom Quaker, as part of that settlement, agreed to provide compensation. In addition, you presently have an active lawsuit against Quaker: Case No. 99-15886, pending in the United States Court of Appeals for the Ninth Circuit (the "Lawsuit"), which previously was Case No. 96-0822 in the United States District Court for the district of Arizona.

C. To qualify for the compensation described below in paragraphs 4-5, you must sign this Waiver & Release and return it to the EEOC by no later than October 28, 1999.

D. By signing this document, you are entering into a legally binding contract. You are advised to consult an attorney before doing so.

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**SUBSTANTIVE PROVISIONS**

**1. Waiver Of Claims:** Except as provided in paragraph 4(b), you forever waive and release any and all claims against Quaker which you have or may have that arise out of or relate in any way to your employment with Quaker, the termination of that employment, and/or Quaker's failure to re-hire you. This is intended as a full settlement and compromise of each and every claim and cause of action of any kind, whether known or unknown, actual or contingent; PROVIDED, claims based entirely on events that occur in the future are not affected by this Waiver & Release, nor are rights to post-employment benefits (e.g., pension benefits, or a claim for payment of a doctor's bill under your retiree medical insurance).

Without limitation, this waiver and release includes all claims asserted in your Lawsuit, plus all claims and charges of age discrimination under the Age Discrimination in Employment Act of 1967 ("ADEA"), race or sex discrimination under Title VII of the Civil Rights Act of 1964, disability discrimination under the Americans with Disabilities Act, *and* all other tort claims, contract claims, public policy claims and claims under other federal or state statutes. Without limitation, it also includes all claims for backpay, front pay, compensatory damages, punitive damages, liquidated damages, interest, costs, sanctions, and/or attorney fees.

**2. Covenant Not To Sue:** You covenant not to file any new lawsuit or charge against Quaker based on any claim you waived in paragraph 1. If you breach this covenant, you must indemnify (reimburse) Quaker for any costs or damages

it incurs as a result of the new lawsuit or charge. Without limitation, this means you would be required to reimburse Quaker for all reasonable attorney fees it incurred as a result of the new lawsuit or charge. Further, you understand that the EEOC will consider your EEOC charge closed and will not take any further action on your behalf.

**3. Agreement Not To Apply For Re-Hire:** You covenant and promise not to apply for hire, re-hire or reinstatement to any job at Quaker. This covenant is sufficient reason for Quaker to deny any application you might make in the future. Further, you stipulate that once it is established that you entered into this covenant, it shall conclusively be presumed that this covenant, and your breach of it, were the only reasons why Quaker declined to hire, re-hire, or reinstate you. [In other words, by signing this Agreement, you are agreeing that you will never work for Quaker at any time in the future.] If you are inadvertently hired by Quaker, that mistake will be brought to your attention, and you will promptly resign voluntarily. If you refuse to resign voluntarily, Quaker has the right to terminate you, and it shall conclusively be presumed that this provision was the sole and exclusive reason for termination.

**4. Cash Payment To You — "High-Low" Deal:** This settlement is a "high-low" deal. That means you are guaranteed a certain minimum payment (the "low"). You also have the potential to receive an additional, larger payment (the "high"), if you win your appeal.

**A. Guaranteed Payment ("Low"):** As consideration for your agreement to the terms in paragraphs 1-3,

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Quaker shall pay you a cash sum of not less than "X" [redacted] dollars, minus applicable withholding on the portion of this sum which is considered backpay wages. The exact sum you receive may be somewhat larger (it cannot be less) if other eligible Class Members decide not to participate in this settlement. Quaker must pay the $"X" sum to you within fourteen (14) days after it receives a signed copy of this Waiver & Release; any additional sum you might be owed (if other Class Members do not "opt in") would be governed by the terms of the master Agreement between Quaker and the EEOC.

You, Quaker and the EEOC have agreed that [part] of the total payment you are receiving is for backpay wages, so Quaker will deduct applicable withholdings from that part of your payment and will issue a W-2 form. Quaker will pay [another part] of the remaining sum directly to your attorneys (to cover their fees plus costs), and will issue a form 1099 with respect to this second payment. Quaker will not withhold anything from the remaining payment . . . that you receive, but it is still considered "ordinary income," so Quaker will issue a form 1099 and you must report it as part of your 1999 gross income. Quaker will send all of these checks to your attorneys.

**B. Possible Additional Payment ("High"):** Notwithstanding anything to the contrary in paragraphs 1 or 2, you may continue to pursue your

appeal to the Ninth Circuit (Case No. 99-15886). If the Ninth Circuit affirms across-the-board, Quaker shall not owe you any payment beyond the sum described in paragraph 4(A). However, if the Ninth Circuit reverses and/or remands one or more of the issues raised in your appeal, then Quaker must make an election between the following two options:

(i) Quaker can pay you an additional "Y" dollars. In that event, you must dismiss your Lawsuit with prejudice, and the waiver, release and covenants described above shall remain in effect; they will bar you from collecting anything in your Lawsuit (including, without limitation, any attorney fees or sanctions the Ninth Circuit may have awarded); or

(ii) Quaker can elect not to pay you any additional sum. In that event, the waiver, release and covenant not to sue described in paragraphs 1 and 2 above shall be *voided* with respect to whatever claims/issues are reversed and/or remanded in your Lawsuit, and you may litigate that case to conclusion. In this event, you would keep the benefits you already received under paragraphs 4(a) and 5; provided, Quaker would be entitled to a $"X" setoff against the damages, sanctions and/or fees (if any) you are awarded in the Lawsuit (this setoff would be applied by the court *after* the jury renders its award; the jury would never be told about this provision).

Quaker must make this election, and must notify you in writing of its decision, within thirty (30) days after the Ninth Circuit issues a final decision regarding your appeal (if either party seeks rehearing or rehearing en banc, the decision will not be considered final until the Court rules on that petition). If Quaker elects to pay the additional $"Y", it must do so within 30 days after notifying you of its election.

**5. Pension Credit:** The Quaker Retirement Plan (the "Plan") will give you retroactive pension credit for the [portion] that is considered backpay wages, as if you had received that entire sum in the first month immediately following the end of your severance period. That will increase your "Accrued Benefit," which means the monthly pension checks you receive after December 1, 1999 will be larger. In addition, on or about December 1, 1999, you will receive a lump sum equalization payment from the Plan (to make up for not receiving larger payments in the past). All calculations of this pension credit for backpay shall be governed by the terms of the Plan.

**6. No Other Credit:** You agree that other than the pension credit described in paragraph 5, you are not entitled to any other benefit or credit based on the backpay payment (e.g., it does not entitle you to an ESOP award).

**7. No Admissions:** Quaker denies that it discriminated against anyone, based on their age or any other unlawful consideration. You understand and agree that this settlement does not constitute an admission of liability or wrongdoing by Quaker.

**8. Confidentiality:** You, Quaker and the EEOC have agreed that most details about this settlement must remain confidential. Some information will be disclosed in a joint press release Quaker and the EEOC are issuing, but you are not permitted to disclose anything about the settlement to anyone in the media, directly or indirectly, nor to current or former Quaker employees (other than your co-plaintiffs in the related cases). If you violate this provision and anything you disclose appears in any media report or article, you must repay $"Z" from your settlement proceeds (Quaker may treat this as a setoff if the breach occurs before you are paid); for any other breach of this provision, Quaker would be entitled to its actual damages, if any — in either instance it could seek any appropriate injunctive relief.

To enforce this provision, you hereby waive any reporter-informant or reporter-source privilege that otherwise might prevent a member of the media from being compelled to reveal your identity if you are the person who disclosed information to him/her.

All parties (you, Quaker, and the EEOC) are prohibited from informing the Ninth Circuit about the "high-low" arrangement, or any other aspect of this agreement, during the pendancy of your appeal. After the Ninth Circuit issues a final judgment, however, either party may cite this agreement in subsequent proceedings if it is relevant (e.g., to establish a waiver, or entitlement to a setoff).

**9. Choice Of Law & Forum:** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, without giving effect to choice of law principles.

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**10. Full Agreement:** This written document contains the entire agreement between you, Quaker and the EEOC on the subjects it covers, and supersedes any prior agreement relating to these matters. No promises have been made to you, nor have you been offered any incentives, beyond the ones described in this document.

**11. Severability:** If any provision of this Agreement is held to be invalid, unlawful or unenforcible, it shall be severed or re-written, and the remaining terms and provisions shall remain in full force and effect. A court should re-write any such provision to make it valid, lawful and enforcible while still, to the maximum extent possible, achieving the intent and effect of the original provision.

**12. Acknowledgements:** You represent that you consulted with your attorneys before signing this Waiver & Release; that you had adequate time to consider whether to accept it; that you understand each provision in this document and voluntarily signed it; and that the consideration you are receiving under this agreement is not something to which you already are entitled.

s/ John G. Jartz
John G. Jartz, Sr. V.P. & General Counsel, on behalf of The Quaker Oats Company

Date: 10/11, 1999

s/ Jerry Jeney
Jerry Jeney

s/ Arthur W. Pederson
Arthur W. Pederson, attorney for Jeney

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Note: In *both* settlement agreements appended hereto, all dollar sums have been redacted and replaced with letters (*e.g.*, "X" and "A").

## APPENDIX B — WAIVER AND RELEASE OF JOSEPH GENTILE DATED OCTOBER 11, 1999

### WAIVER & RELEASE — JOSEPH GENTILE

### INTRODUCTION

A. The Quaker Oats Company ("Quaker") and the United States Equal Employment Opportunity Commission ("EEOC") have reached a settlement of potential classwide claims involving the EEOC's allegation that Quaker discriminated against employees over the age of 40 during the 1994 re-engineering of its sales force. Quaker denies that it discriminated against anyone.

B. You, Joseph Gentile ("you"), are one of the potential Class Members to whom Quaker, as part of that settlement, agreed to provide compensation. In addition, you presently have an active lawsuit against Quaker: Case No. 99-15887, pending in the United States Court of Appeals for the Ninth Circuit (the "Lawsuit"), which previously was Case No. 95-1516 in the United States District Court for the district of Arizona.

C. To qualify for the compensation described below in paragraphs 4-5, you must sign this Waiver & Release and return it to the EEOC by no later than October 28, 1999.

D. By signing this document, you are entering into a legally binding contract. You are advised to consult an attorney before doing so.

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## SUBSTANTIVE PROVISIONS

**1. Waiver Of Claims:** Except as provided in paragraph 4(b), you forever waive and release any and all claims against Quaker which you have or may have that arise out of or relate in any way to your employment with Quaker, the termination of that employment, and/or Quaker's failure to re-hire you. This is intended as a full settlement and compromise of each and every claim and cause of action of any kind, whether known or unknown, actual or contingent; PROVIDED, claims based entirely on events that occur in the future are not affected by this Waiver & Release, nor are rights to post-employment benefits (e.g., pension benefits, or a claim for payment of a doctor's bill under your retiree medical insurance).

Without limitation, this waiver and release includes all claims asserted in your Lawsuit, plus all claims and charges of age discrimination under the Age Discrimination in Employment Act of 1967 ("ADEA"), race or sex discrimination under Title VII of the Civil Rights Act of 1964, disability discrimination under the Americans with Disabilities Act, *and* all other tort claims, contract claims, public policy claims and claims under other federal or state statutes. Without limitation, it also includes all claims for backpay, front pay, compensatory damages, punitive damages, liquidated damages, interest, costs, sanctions, and/or attorney fees.

**2. Covenant Not To Sue:** You covenant not to file any new lawsuit or charge against Quaker based on any claim you waived in paragraph 1. If you breach this covenant, you must indemnify (reimburse) Quaker for any costs or damages

it incurs as a result of the new lawsuit or charge. Without limitation, this means you would be required to reimburse Quaker for all reasonable attorney fees it incurred as a result of the new lawsuit or charge. Further, you understand that the EEOC will consider your EEOC charge closed and will not take any further action on your behalf

**3. Agreement Not To Apply For Re-Hire:** You covenant and promise not to apply for hire, re-hire or reinstatement to any job at Quaker. This covenant is sufficient reason for Quaker to deny any application you might make in the future. Further, you stipulate that once it is established that you entered into this covenant, it shall conclusively be presumed that this covenant, and your breach of it, were the only reasons why Quaker declined to hire, re-hire, or reinstate you. [In other words, by signing this Agreement, you are agreeing that you will never work for Quaker at any time in the future.] If you are inadvertently hired by Quaker, that mistake will be brought to your attention, and you will promptly resign voluntarily. If you refuse to resign voluntarily, Quaker has the right to terminate you, and it shall conclusively be presumed that this provision was the sole and exclusive reason for termination.

**4. Cash Payment To You — "High-Low" Deal:** This settlement is a "high-low" deal. That means you are guaranteed a certain minimum payment (the "low"). You also have the potential to receive an additional, larger payment (the "high"), if you win your appeal.

**A. Guaranteed Payment ("Low"):** As consideration for your agreement to the terms in paragraphs 1-3,

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Quaker shall pay you a cash sum of not less than "A", minus applicable withholding on the portion of this sum which is considered backpay wages. The exact sum you receive may be somewhat larger (it cannot be less) if other eligible Class Members decide not to participate in this settlement. Quaker must pay the $"A" sum to you within fourteen (14) days after it receives a signed copy of this Waiver & Release; any additional sum you might be owed (if other Class Members do not "opt in") would be governed by the terms of the master Agreement between Quaker and the EEOC.

You, Quaker and the EEOC have agreed that [part] of the total payment you are receiving is for backpay wages, so Quaker will deduct applicable withholdings from that part of your payment and will issue a W-2 form. Quaker will pay [another part] of the remaining sum directly to your attorneys (to cover their fees plus costs), and will issue a form 1099 with respect to this second payment. Quaker will not withhold anything from the remaining payment . . . that you receive, but it is still considered "ordinary income," so Quaker will issue a form 1099 and you must report it as part of your 1999 gross income. Quaker will send all of these checks to your attorneys.

**B. Possible Additional Payment ("High"):** Notwithstanding anything to the contrary in paragraphs 1 or 2, you may continue to pursue your

appeal to the Ninth Circuit (Case No. 99-15887). If the Ninth Circuit affirms across-the-board, Quaker shall not owe you any payment beyond the sum described in paragraph 4(A). However, if the Ninth Circuit reverses and/or remands one or more of the issues raised in your appeal, then Quaker must make an election between the following two options:

(i) Quaker can pay you an additional "B". In that event, you must dismiss your Lawsuit with prejudice, and the waiver, release and covenants described above shall remain in effect; they will bar you from collecting anything in your Lawsuit (including, without limitation, any attorney fees or sanctions the Ninth Circuit may have awarded); or

(ii) Quaker can elect not to pay you any additional sum. In that event, the waiver, release and covenant not to sue described in paragraphs 1 and 2 above shall be *voided* with respect to whatever claims/issues are reversed and/or remanded in your Lawsuit, and you may litigate that case to conclusion. In this event, you would keep the benefits you already received under paragraphs 4(a) and 5; provided, Quaker would be entitled to a $"A" setoff against the damages, sanctions and/or fees (if any) you are awarded in the Lawsuit (this setoff would be applied by the court *after* the jury renders its award; the jury would never be told about this provision).

Quaker must make this election, and must notify you in writing of its decision, within thirty (30) days after the Ninth Circuit issues a final decision regarding your appeal (if either party seeks rehearing or rehearing en banc, the decision will not be considered final until the Court rules on that petition). If Quaker elects to pay the additional $"B", it must do so within 30 days after notifying you of its election.

**5. Pension Credit:** The Quaker Retirement Plan (the "Plan") will give you retroactive pension credit for the [portion] that is considered backpay wages, as if you had received that entire sum in the first month immediately following the end of your severance period. That will increase your "Accrued Benefit," which means the monthly pension checks you receive after December 1, 1999 will be larger. In addition, on or about December 1, 1999, you will receive a lump sum equalization payment from the Plan (to make up for not receiving larger payments in the past). All calculations of this pension credit for backpay shall be governed by the terms of the Plan.

**6. No Other Credit:** You agree that other than the pension credit described in paragraph 5, you are not entitled to any other benefit or credit based on the backpay payment (e.g., it does not entitle you to an ESOP award).

**7. No Admissions:** Quaker denies that it discriminated against anyone, based on their age or any other unlawful consideration. You understand and agree that this settlement does not constitute an admission of liability or wrongdoing by Quaker.

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**8. Confidentiality:** You, Quaker and the EEOC have agreed that most details about this settlement must remain confidential. Some information will be disclosed in a joint press release Quaker and the EEOC are issuing, but you are not permitted to disclose anything about the settlement to anyone in the media, directly or indirectly, nor to current or former Quaker employees (other than your co-plaintiffs in the related cases). If you violate this provision and anything you disclose appears in any media report or article, you must repay $"C" from your settlement proceeds (Quaker may treat this as a setoff if the breach occurs before you are paid); for any other breach of this provision, Quaker would be entitled to its actual damages, if any — in either instance it could seek any appropriate injunctive relief.

To enforce this provision, you hereby waive any reporter-informant or reporter-source privilege that otherwise might prevent a member of the media from being compelled to reveal your identity if you are the person who disclosed information to him/her.

All parties (you, Quaker, and the EEOC) are prohibited from informing the Ninth Circuit about the "high-low" arrangement, or any other aspect of this agreement, during the pendancy of your appeal. After the Ninth Circuit issues a final judgment, however, either party may cite this agreement in subsequent proceedings if it is relevant (e.g., to establish a waiver, or entitlement to a setoff).

**9. Choice Of Law & Forum:** This Agreement shall be governed by and construed in accordance with the laws of the state of Arizona, without giving effect to choice of law principles.

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**10. Full Agreement:** This written document contains the entire agreement between you, Quaker and the EEOC on the subjects it covers, and supersedes any prior agreement relating to these matters. No promises have been made to you, nor have you been offered any incentives, beyond the ones described in this document.

**11. Severability:** If any provision of this Agreement is held to be invalid, unlawful or unenforcible, it shall be severed or re-written, and the remaining terms and provisions shall remain in full force and effect. A court should re-write any such provision to make it valid, lawful and enforcible while still, to the maximum extent possible, achieving the intent and effect of the original provision.

**12. Acknowledgements:** You represent that you consulted with your attorneys before signing this Waiver & Release; that you had adequate time to consider whether to accept it; that you understand each provision in this document and voluntarily signed it; and that the consideration you are receiving under this agreement is not something to which you already are entitled.

s/ John G. Jartz
John G. Jartz, Sr. V.P. & General Counsel, on behalf of The Quaker Oats Company

Date: Oct. 11, 1999

s/ Joseph Gentile
Joseph Gentile

s/ Arthur W. Pederson
Arthur W. Pederson, attorney for Gentile